Supreme Court, U.S.
FILED
JOSEPH F. SPANIOL, JR.

No. 86-997

IN THE SUPREME COURT
OF THE UNITED STATES

October Term 1986

COMMONWEALTH OF PENNSYLVANIA,
Petitioner

v.

CHARLES E. LUTZ,
Respondent

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

On December 16, 1986, your Petitioner, the Commonwealth of Pennsylvania, filed a Petition for Writ of Certiorari to the Supreme Court of Pennsylvania with this Honorable Court. On or about February 18, 1987, Respondent filed his Brief in Opposition. In said Brief, Respondent contends, inter alia, that your Petitioner raised for the first time in its Petition to this Honorable Court the issue of good faith reliance upon the warrantless search provision of a statute which heretofore had never been declared unconstitutional, and, therefore, according to Respondent, this issue is forever waived.

Your Petitioner submits that Respondent is mistaken. In its Brief

before the Supreme Court of Pennsylvania, Petitioner raised the very argument about which Respondent now complains. (An excerpt of pages 33-34 wherein this matter was addressed in Petitioner's Brief to the Pennsylvania Supreme Court is attached hereto and made a part hereof.) At that time, the issue was whether or not the accused, Charles E. Lutz, Respondent herein, had interfered with the performance of duty of certain Department of Environmental Resources (DER) employees. Respondent Lutz claimed that the DER employees had trespassed onto his land and therefore were outside the course of their duties and that his subsequent resort to self-help did not amount to interfering with a legitimate governmental function. At that time, your Petitioner contended, inter alia, that the DER employees, in addition to acting pursuant to the open

fields doctrine, had the right to rely upon the warrantless entry provision of the Solid Waste Management Act in Pennsylvania, Act of July 7, 1980, P.L. 380, 35 P.S. §§ 6018.101 et seq.. As set forth in its Brief, that portion of the Act had never, to your Petitioner's knowledge, been declared unconstitutional; nor had it even been challenged on constitutional grounds. Therefore, your Petitioner contended, the DER employees were legitimately on Respondent's property, for they had, in good faith, relied on a constitutionally enacted statute which was still valid at the time they made their entry.

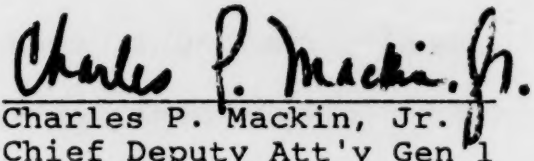
Accordingly, Petitioner has properly asserted and preserved the issue of good faith reliance in the proceedings below. It is not estopped from pressing that contention in this Honorable Court.

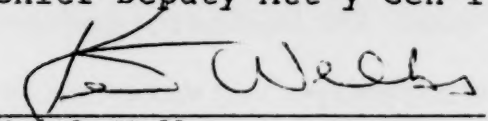
CONCLUSION

WHEREFORE, your Petitioner prays that the requested Petition for Writ of Certiorari to the Supreme Court of Pennsylvania be granted.

Respectfully submitted,

LeRoy S. Zimmerman
Attorney General

By: 
Charles P. Mackin, Jr.
Chief Deputy Att'y Gen'l

By: 
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EXCERPT FROM PAGES 33-34 OF PETITIONER'S BRIEF BEFORE THE SUPREME COURT OF PENNSYLVANIA

Long has it been held that legislative enactments are presumed valid until declared otherwise. Simco Sales of Pa., Inc. v. Township of Lower Merion, 38 Pa. Commonwealth Ct. 434, 394 A.2d 642 (1978); Lutz v. Armour, 395 Pa. 576, 151 A.2d 108 (1959). To the Commonwealth's knowledge, the statute under consideration has never before been declared unconstitutional.

Thus, Walton and Coleman, the two DER agents, had every right to act in performance of their duties under § 6018.608 of the Act without being subject to Lutz's physical interference therewith.

PROOF OF SERVICE

I hereby certify that I served the foregoing document upon the persons and in the manner indicated below:

Service by first class mail, postage pre-paid, on Tuesday, March 3, 1987, addressed as follows:

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